

REMARKS

By this amendment, Claims 24-36 are currently amended.

The above-identified Office Action has been reviewed and the references carefully considered. In view hereof, the present amendment is submitted. It is contended that by the present amendment all bases of rejection set forth in the Office Action are traversed and overcome. Accordingly, reconsideration and withdrawal of the rejection is respectfully requested.

The Examiner has objected to Claims 24, 32, and 35 due to grammatical or typographical errors. In addition, the Examiner has rejected Claims 24-36 for failing to end in a period or start with a capital letter. By this amendment, the Applicant has corrected these issues, and withdrawal of the objections of Claims 24-36 is respectfully requested.

The Examiner's rejections will be addressed in the order presented in the Detail Action section of the Office Action.

Claim Rejections 35 U.S.C. § 102(b)

The Examiner has rejected Claims 24-29 and 31-36 under 35 U.S.C. § 102(b) as anticipated by U.S. Patent No. 5,606,745 to Gray. Section 102(b) states that a person shall not be entitled to a patent when:

the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Applicant traverses the Examiner's rejection. Under 35 U.S.C. § 102, to constitute an anticipation all the claimed elements must be found in exactly the same function and united in the same way to perform the identical function in a single unit of the prior art. Or stated

differently, anticipation can only be established by a single prior art reference which discloses each and every element of the claimed invention.

Applicant respectfully submits that Gray does not disclose each and every element required by the currently amended Claims 24-29 and 31-36. Accordingly, Gray fails as a reference upon which to predicate an anticipation rejection and submits that the Examiner's rejection under § 102 should be withdrawn.

In an effort to expedite and facilitate prosecution, and acting without prejudice, the Applicant has amended Claims 24-29 and 31-36. The currently amended Claim 24 now clearly claims that the elongate resilient pieces extend over the joints.

Conversely, Gray discloses an exercise suit having at least one resilient rib secured thereto for biasing a selected body portion in a preselected position such that when the wearer moves that body portion, he experiences resistance. As seen in Figures 1 and 2 of Gray, the resilient ribs are not parallel to or co-extensive with each-other as required by Claim 24. Furthermore, since the ribs are not parallel, and are arranged end-to-end, a plurality of ribs does not cover any given joint as required by Claim 24. This is seen in Figure 1 of Gray, where the only locations in which the ribs overlap with each other are at the ends of the ribs. Although it does not appear to be specifically discussed by Gray, the overlapping portions seem to be located specifically over areas which are not joints, such as along the upper arms and legs. Furthermore, the body portions which are clearly joints, such as the knees and elbows, are only covered by a single rib. Additionally, Gray stresses that the ribs should provide a continuous resistance along the joints (col. 3, lines 54-55), and

therefore it would not be desired to have ribs overlap along a joint because an area of overlapping would inherently provide a resistance greater than a single rib.

Therefore, Gray does not disclose a plurality of elongate resilient pieces which are parallel, coextensive with each other, and which extend over a joint. As such, Gray fails to disclose each and every element of Claim 24. Consequently, the Applicant respectfully requests the Examiner withdraw the rejection of Claim 24.

Claims 25-33 depend on Claim 24 and are argued as patentable over Gray for the same reasons given regarding Claim 24.

In addition, Claim 26 requires that the strip of the elastomeric material be *bonded* to the clothing material. As seen in Figure 3, and discussed in column 2, line 62 – column 3, line 3 of Gray, the ribs are secured to the suit by being inserted into pockets which are sewn onto the suit. Gray does not disclose wherein a strip of elastomeric material is bonded to the clothing material. Therefore, the Applicant respectfully contends that Gray does not anticipate Claim 26 for the additional reason provided.

As to Claim 27, Claim 27 is dependent upon Claim 26, and therefore Claim 27 is not disclosed by Gray for the same reasons as provided for Claims 24 and 26. In addition, the rib in Figure 3 of Gray, and as discussed in column 3, line 19, is oval, and not substantially circular in cross-section. Therefore, the Applicant respectfully contends that Gray does not anticipate Claim 27 for the additional reasons provided.

As to claim 28, the rib disclosed by Gray is housed within an elongated pocket sewn to a body suit. The rib is not integrally formed with the clothing material as required by

Claim 28. Therefore, the Applicant respectfully contends that Gray does not anticipate Claim 28 for the additional reasons provided.

As to Claim 31, Gray does not disclose an elongated resilient piece which is an elastomeric rod having a substantially circular cross-section. As stated above, Gray discloses a rib by having an oval cross-section – not a substantially circular cross-section as required by Claim 31. To that end, Gray even calls the strip a “rib,” which is an elongated rigid member having a flattened cross-section. Therefore, the Applicant respectfully contends that Gray does not anticipate Claim 31 for the additional reasons provided.

The Examiner has also rejected Claim 34, arguing that it is anticipated by Gray. As argued above, Gray does not disclose a plurality of elongated resilient pieces being worn over a joint as required by Claim 34. Gray only discloses wherein a single rib overlies any given joint. Therefore, Gray does not disclose each and every element of Claim 34.

Claim 35 is dependent upon Claim 34, and therefore Claim 35 is argued as patentable over Gray for the reasons stated above. In addition, Gray does not disclose an elastomeric material **bonded** to the clothing, a strip of elastomeric material formed integrally with the material, a helical extension spring, or an elastomeric rod of substantially circular cross-section. Therefore, the Applicant respectfully contends that gray does not disclose each and every element of Claim 35.

The Examiner has rejected Claim 36, arguing that Gray discloses a helical spring encapsulated in a pocket. However, Gray does not disclose as such. The Examiner cites Gray as disclosing “resilient ribs 32 [that] are fabricated from a semi-rigid elastomeric material such as silicone rubber.” However, this does not disclose a helical spring as

required by Claim 36. Therefore, the Applicant respectfully requests that the Examiner withdraw the rejection of Claim 36 since Gray does not disclose a helical spring.

The Examiner has also rejected Claims 24-25, 29-30, and 32-36 under 35 U.S.C. § 102(b) as anticipated by U.S. Patent No. 5,261,871 to Greenfield. Greenfield discloses an orthopedic support brace having a plurality of pockets capable of receiving flexible wire members for providing lateral support for a joint to be used in assisting the patient in recovering from an injury. This is not a resistance exercise clothing article as required by Claims 24-36.

Furthermore, the objective of the device disclosed by Greenfield is to impair or resist flexion movement in a direction in which the joint is not intended to bend. Conversely, the resistance exercise clothing article disclosed by the Applicant is intended to provide resistance against any given joint's natural direction of movement. Therefore, Greenfield does not, and cannot, anticipate all the claimed elements found in exactly the same function and united in the same way to perform the identical function.

Greenfield does not disclose Claim 24 because Greenfield is not directed to a resistance exercise clothing article as required by Claim 24. In addition, the article of Claim 24 functions in an entirely different manner than the orthopedic device disclosed by Greenfield. Therefore, the Applicant respectfully requests the Examiner withdraw the rejection of Claim 24. Applicant submits that Claim 24 is patentable over the prior art and in condition for allowance.

Claims 25, 29-30, and 32-33 depend on Claim 24 and are argued as patentable over Greenfield for the same reasons given regarding Claim 24.

In addition, Claim 30 requires that each resilient piece be a helical extension spring. Greenfield discloses a helical spring, however the spring of Greenfield is a torsional spring, whereas the spring required by Claim 30 is an extension spring. That is, the force applied to a torsional spring is perpendicular to the axis of the spring's coil, while the forces applied to an extension spring are coaxial to the spring's axis. Therefore, the torsional spring of Greenfield does not disclose Claim 30 because it is a different type of spring and it functions in a different manner. The Applicant respectfully requests the Examiner withdraw the rejection of Claim 30. Applicant submits that Claim 30 is patentable over the prior art and in condition for allowance.

As to Claim 35, Greenfield does not disclose either an elastomeric material bonded to the clothing material, a strip of elastomeric material formed integrally with the clothing, a helical extension spring, or an elastomeric rod of substantially circular cross-section. As discussed above, Greenfield does not disclose a helical compression spring as claimed. Additionally, Greenfield does not disclose an elastomeric rod, only one which is formed from a metal. Therefore, the Applicant respectfully requests the Examiner withdraw the rejection of Claim 35. Applicant submits that Claim 35 is patentable over the prior art and in condition for allowance.

Claim 36 is dependent upon Claim 35, and is therefore not disclosed by Greenfield for the reasons stated above, and in particular, Greenfield does not disclose a helical extension spring.

Applicant submits that the claims presented herein define patentably over the prior art of record herein.

Conclusion

It is respectfully submitted by this amendment that all bases of rejection and objection have been traversed and overcome and thus, it is contended that the application has now been placed in a condition for allowance. A notice to this effect is, therefore, respectfully requested.

If the Examiner feels that prosecution of this application can be expedited, then he is courteously requested to place a telephone call to the Applicant's attorney at the number listed below.

This submission is being made in accordance with 37 C.F.R. § 1.34. The undersigned attorney is not an attorney of record, but is acting under the authority of attorney of record Arnold S. Weintraub (Reg. No. 25,523), who is currently unavailable to act on behalf of the applicant.

Respectfully submitted,

Dated: May 26, 2009

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